

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

AKO K. BURRELL,

Plaintiff,

-v-

9:22-CV-702

T. NELSON, JOHNSON, FONTAIN,
SERGEANT BULLOCK, ROWE,
NILES, SAWYER, LT. SPINNER,
HASTINGS, OZBORNE, and
MAINVILLE,

Defendants.

APPEARANCES:

OF COUNSEL:

AKO K. BURRELL

Plaintiff, Pro Se

17-B-2994

Mid-State Correctional Facility

P.O. Box 2500

Marcy, NY 13403

HON. LETITIA JAMES

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The Capitol

Albany, NY 12224

OLIVIA R. COX, ESQ.

Ass't Attorney General

DAVID N. HURD

United States District Judge

ORDER ON REPORT & RECOMMENDATION

On July 1, 2022, *pro se* plaintiff Ako K. Burrell (“plaintiff”), an inmate in the custody of the New York State Department of Corrections and Community Supervision, filed this 42 U.S.C. § 1983 action alleging that defendants violated his civil rights while he was confined at Upstate Correctional Facility in Malone, New York. Dkt. No. 1. Along with his complaint, plaintiff also sought leave to proceed *in forma pauperis* (“IFP Application”). Dkt. Nos. 3, 4.

On February 9, 2023, this Court granted plaintiff’s IFP Application, dismissed certain claims and certain defendants, and sent the parties to discovery on plaintiff’s (1) Eighth Amendment excessive force and failure-to-intervene claims against Hastings, Spinner, and Mainville; and (2) First Amendment retaliation claims against Fontain, Johnson, Nelson, Bullock, Niles, Sawyer, Rowe, Osborne, Hastings, Spinner, and Mainville. Dkt. No. 15.

On April 25, 2023, a subset of these defendants¹—in particular, Fontain, Johnson, Nelson, Bullock, Niles, Sawyer, Rowe, and Osborne—moved for summary judgment under Federal Rule of Civil Procedure (“Rule”) 56 based

¹ Defendants did not seek summary judgment on plaintiff’s claims against defendants Hastings, Spinner, and Mainville.

on plaintiff's alleged failure to exhaust his administrative remedies. Dkt. No. 22. The motion was fully briefed. Dkt. Nos. 26, 27.

On June 13, 2023, U.S. Magistrate Judge Andrew T. Baxter advised by Report & Recommendation ("R&R") that the moving defendants' motion for summary judgment be granted and plaintiff's complaint be dismissed without prejudice against defendants Fontain, Johnson, Nelson, Bullock, Niles, Sawyer, Rowe, and Osborne. Dkt. No.

Plaintiff has not filed objections, and the time period in which to do so has expired. *See* Dkt. No. 28. Upon review for clear error, the R&R is accepted and will be adopted in all respects. *See* FED. R. CIV. P. 72(b).

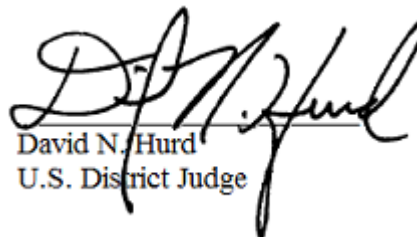
Therefore, it is

ORDERED that

1. The Report & Recommendation is ACCEPTED;
2. Defendants' motion for summary judgment is GRANTED;
3. Plaintiff's complaint is DISMISSED without prejudice against defendants Fontain, Johnson, Nelson, Bullock, Niles, Sawyer, Rowe, and Osborne based on a failure to exhaust administrative remedies.

IT IS SO ORDERED.

Dated: July 6, 2023
Utica, New York.


David N. Hurd
U.S. District Judge